

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Michael Grady; Jennifer Grady,

10 Plaintiffs,

11 vs.

12 Bank of Elmwood; Elmwood Financial
13 Corporation; Jonathan Levin; Sarah Levin,

14 Defendants.

15 Tri City National Bank,

16 Counterclaimant,

17 vs.

18 Michael Grady and Jennifer Grady,

19 Counterdefendant.

20 The Federal Deposit Insurance
21 Corporation as Receiver for Bank of
Elmwood,

22 Intervenor.
23

No. CV 11-2060-PHX-JAT

ORDER

24 On August 18, 2012, Plaintiffs filed a notice of filing bankruptcy. (Doc. 83).
25 Generally, the automatic stay provisions of the bankruptcy code do not apply to proceedings
26 initiated by the debtor, as is the case here. *See Martin-Trigona v. Champion Federal Savings*
27 *& Loan*, 1988 WL 46596, *2 (N.D. Ill. 1988); *In re Hill*, 39 B.R. 894, 897 (Bkrtcy. Or.,
28

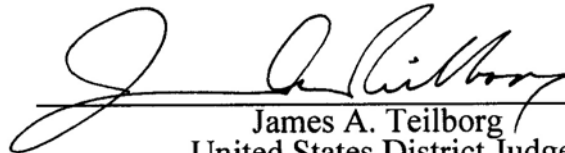
1 1984).¹ Thus, the Court confirms all outstanding deadlines in this case. However, the
2 pending motion to exonerate bond and to distribute proceeds may involve property of the
3 bankruptcy estate; accordingly, the Court will treat that motion as subject to the stay and
4 deny it, without prejudice.

5 Based on the foregoing,

6 **IT IS ORDERED** denying the motion to exonerate bond (Doc. 82), without
7 prejudice.

8 **IT IS FURTHER ORDERED** that the parties shall file a status report by November
9 1, 2012, advising whether the Trustee will be substituting in as the Plaintiff and whether the
10 parties anticipate the claims in this case ultimately being resolved within the bankruptcy
11 proceeding.

12 DATED this 24th day of August, 2012.

13
14
15 
16 James A. Teilborg
17 United States District Judge
18
19
20
21
22
23
24
25
26

27 ¹ But the cause of action is the property of the estate. *Turner v. Cooke*, 362 F.3d
28 1219, 1225-26 (9th Cir. 2004); *Cusano v. Klien*, 264 F.3d 936, 945 (9th Cir. 2001).